

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Thomas Kelley,

Civil No. 13-215 (DWF/JJG)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Scott Fisher,

Defendant.

This matter is before the Court upon *pro se* Plaintiff Thomas Kelley's objections (Doc. No. 11) to Magistrate Judge Jeanne J. Graham's March 20, 2013 Report and Recommendation (Doc. No. 10) insofar as it recommends that: (1) Plaintiff's application to proceed *in forma pauperis* be denied; and (2) this action be dismissed without prejudice.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

Having carefully reviewed the record, the Court concludes that Plaintiff's objections offer no basis for departure from the Report and Recommendation. While Plaintiff has submitted a \$5 partial filing fee, he has otherwise failed to comply with

Magistrate Judge Graham's prior order, requiring that he submit an amended IFP application. (*See* Doc. No. 5.) Plaintiff's complaint is thus properly dismissed without prejudice. Should Plaintiff wish to file a separate petition for habeas relief under 28 U.S.C. § 2241, he must do so comprehensibly on the form prescribed for use in this District. (*See* Doc. No. 10 at 1-2 n.1.)

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Thomas Kelley's objections (Doc. No. [11]) to Magistrate Judge Jeanne J. Graham's March 20, 2013 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Jeanne J. Graham's March 20, 2013 Report and Recommendation (Doc. No. [10]) is **ADOPTED**.

3. Plaintiff's application to proceed *in forma pauperis* (Doc. No. [2]) is **DENIED**.

4. This action is **DISMISSED WITHOUT PREJUDICE**.

5. The Clerk of Court is directed to return the \$5 filing fee to Plaintiff.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 2, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge